

SENATE RECORD VOTE ANALYSIS

106th Congress
2nd Session

Vote No. 122

June 8, 2000, 6:13 p.m.
Page S-4808 Temp. Record

DEFENSE AUTHORIZATION/Constitutional Point of Order, Campaign Financing

SUBJECT: National Defense Authorization Act for fiscal year 2001 . . . S. 2549. Warner constitutional point of order against the McCain amendment No. 3214 to the Smith (of New Hampshire) amendment No. 3210.

ACTION: POINT OF ORDER NOT SUSTAINED, 42-57

SYNOPSIS: As reported, S. 2549, the National Defense Authorization Act for fiscal year 2001, will authorize a total of \$309.8 billion, which is \$4.5 billion more than requested by the Clinton/Gore Administration and which represents a 4.4-percent real increase in defense spending. This increase will follow last year's real increase in defense spending, which reversed 14 consecutive years of decline. Highlights include a 3.7-percent pay raise for military personnel.

The Smith (of New Hampshire) amendment would prohibit security clearances from being given to convicted felons.

The McCain amendment would amend the Internal Revenue Code to revoke the tax-exempt status of organizations organized under section 527 of the Code unless those organizations gave the Internal Revenue Service (IRS) lists of donors who gave them \$200 or more in a year. Those lists would have to provide the donors names, addresses, occupations, and employers' names. The IRS would make those lists public. Further, section 527 groups would lose their tax-exempt status unless they also reported to the IRS on each expenditure they made over \$500.

Debate was limited by unanimous consent. After debate, Senator Warner raised the point of order that the amendment was unconstitutional because revenue measures must originate in the House. Under Senate rules, the question was put to the Senate.

NOTE: After the vote, the amendment was adopted by voice vote.

Those favoring the point of order contended:

Argument 1:

Democrats, and some Republicans, are quite incensed at the increasing use of section 527 organizations to run issue advertisements. Groups that run those ads do not have to disclose information on their donors or on their expenditures as long as they do not expressly

(See other side)

YEAS (42)			NAYS (57)			NOT VOTING (1)	
Republicans (41 or 75%)	Democrats (1 or 2%)		Republicans (14 or 25%)	Democrats (43 or 98%)		Republicans (0)	Democrats (1)
Allard	Helms	Moynihan	Abraham	Akaka	Kennedy		Conrad ²
Ashcroft	Hutchinson		Burns	Baucus	Kerrey		
Bennett	Inhofe		Chafee	Bayh	Kerry		
Bond	Kyl		Collins	Biden	Kohl		
Brownback	Lott		DeWine	Bingaman	Landrieu		
Bunning	Mack		Hagel	Boxer	Lautenberg		
Campbell	McConnell		Hutchison	Breaux	Leahy		
Cochran	Murkowski		Jeffords	Bryan	Levin		
Coverdell	Nickles		Lugar	Byrd	Lieberman		
Craig	Roberts		McCain	Cleland	Lincoln		
Crapo	Roth		Smith, Gordon	Daschle	Mikulski		
Domenici	Santorum		Snowe	Dodd	Murray		
Enzi	Sessions		Specter	Dorgan	Reed		
Fitzgerald	Shelby		Thompson	Durbin	Reid		
Frist	Smith, Bob			Edwards	Robb		
Gorton	Stevens			Feingold	Rockefeller		
Gramm	Thomas			Feinstein	Sarbanes		
Grams	Thurmond			Graham	Schumer		
Grassley	Voinovich			Harkin	Torricelli		
Gregg	Warner			Hollings	Wellstone		
Hatch				Inouye	Wyden		
				Johnson			

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

advocate the election or defeat of particular candidates. They are permitted to try to influence elections without making those disclosures, but they are not permitted to engage in express advocacy. Democrats would like to ban 527 organizations, but this amendment, for tactical reasons, would only require them to disclose their contributions and expenditures; Democrats understand that most Republicans generally favor disclosure requirements but oppose campaign restrictions.

Democrats, and the knee-jerk liberal media, stop their description of the situation at this point. They fail to mention the rest of the story, which is that they are guilty of selective outrage. They are completely silent about tax-exempt groups that are formed under other parts of the Tax Code and that also engage in unreported issue advertising as well as a wide range of other election activities. Republicans who support this amendment may understand there is more to the story, but they do not press the issue either, perhaps because they know that they would then lose the support of Democratic Senators. We have no doubt that Members who vote for this amendment will receive fawning adulation on the evening news tonight, and that the rest of us will be castigated.

The rest of the story is not all that complicated to report--it is merely inconvenient for liberals to admit. When liberals complain about campaign spending they only complain about campaign spending that says unpleasant things about them and nice things about their opponents. Liberals complain about section 527 organizations because most of the new such organizations that have formed have been hostile to Democrats. The Republican sponsor of this amendment has a personal reason to oppose them as well, because he was recently targeted by a 527 organization media campaign funded by one wealthy family (which voluntarily identified itself, though it was not required to do so). Liberals do not complain about the hundreds of millions of dollars of annual, unreported political spending by 501(c)(5) unions or 501(c)(4) organizations run by groups like the Sierra Club. Why not? Could it have anything to do with the fact that those groups spend that money almost entirely to help Democratic candidates? Why is it that Democrats are unconcerned with reporting requirements for such groups as the American Trial Lawyers Association?

We Republicans tend to have a strong bias in favor of reporting requirements. We favor those requirements for groups that support us as well as for groups that oppose us. We certainly are not going to support the types of caps on spending that Democrats favor, because Republicans need a lot of money to be heard over the constant, biased attacks from the media (more than 90 percent of whom say they are Democrats, and most of the rest of whom no doubt find Democrats to be too conservative). We will vote for disclosure requirements on 527 organizations as part of a broader proposal that applies to other political groups that engage in political activities and are given tax advantages; we just will not vote for this narrow, partisan proposal.

The emergence of 527 organizations that use issue ads was predictable for two reasons. First, we have a Democratic Administration that mysteriously gained access to highly confidential Federal Bureau of Investigation (FBI) files on Republican leaders which it legally did not have any right to possess, and, perhaps by monumental coincidence, people who have accused this Administration of illegal activities have frequently found themselves audited by the IRS shortly thereafter. Maybe the Clinton/Gore Administration has not corruptly used the Government to attack its critics, but the appearance that it has is certainly there, so people who donate money to oppose its policies have good reason to want to donate that money anonymously. The second, continuing reason is that efforts by liberals to restrict campaign speech they find offensive has made it more difficult for contributors to give money to candidates, which has forced them to look for other ways to be heard. If our liberal colleagues were not always trying to suppress political speech, it is unlikely that 527 organizations would ever have been used for issue ads.

The offensive substance of the McCain amendment aside, we note that the point of order that has been raised against it is well taken--the amendment clearly violates the constitutional requirement that the House must originate revenue measures. It does not matter if our colleagues disagree; we cannot make the House consider a bill, and House leaders have already said they think the amendment is unconstitutional. Passing this amendment could kill, for the first time in more than 40 years, the annual defense authorization bill. We urge our colleagues not to play games with our national security; the point of order should be upheld.

Argument 2:

We agree with the constitutional arguments against this amendment, though we support disclosure requirements for 527 organizations. We hope to have a bill closing tax loopholes before the Senate soon; this amendment will be in order on that bill. We urge our colleagues to respect the Constitution by waiting for that bill to come before the Senate before considering this issue.

Those opposing the point of order contended:

Some of our colleagues tell us that they think this amendment is unconstitutional; other of our colleagues tell us that they oppose it on substance as well as for constitutional reasons. Neither of those arguments is any good. The constitutional argument is just a fig leaf. If the House refused to consider the bill based on the constitutional argument that the Senate may not attach a tax measure to a non-tax bill, then we could easily send the authorization bill back without the McCain amendment, and then attach the amendment to a tax bill. The argument on substance, that we must broaden the disclosure requirement to cover more than section 527 organizations, is equally baseless. We think that it is just an effort to make the proposal more controversial and easier to defeat. Section 527 organizations are relatively new entrants in the world of political soft money, and they are growing swiftly. They are completely unregulated as long as they do not use express words of advocacy in political campaigns. Billionaires can donate millions to wage anonymous, personal wars against candidates; even foreign governments can legally give anonymous 527 contributions. This problem barely existed a few years ago but it is now huge. If we do not get rid of it now we can guarantee that scandals will soon emerge. We urge our colleagues to defeat this point of order.